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HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. 1337 of 2004

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant : South East Central Railway through the
Divisional Railway Manager, South East
Central Railway, Bilaspur.

Versus

Respondents : 1. Smt. Chandrika Bai, w/o late Ram Ratan
Lonia, age 35 years.
: 2. Kumari Lalitha, D/o Late Ram Ratan,
aged about 17 years.
: 3. Ram Narayan, S/o late Ram Ratan, aged
15 years.
: 4. Dev Narayan, S/o late Ram Ratan, aged
about 13 years.
: 5. Deep Narayan S/o late Ram Ratan, aged
about 11 years.
: 6. Kumari Durga, D/o late Ram Ratan, aged
about 7 years.
: 7. Kumari Rajeshwari, D/o late Ram Ratan,
aged about 2 years.
: 8. Ram nath, S/o late Ram Ratan, aged
about 4 years.

All minors represented through their
mother - Smt. Chandrika Bai, wife of
late Ram Ratan.

: 9. Shobharam Loniya, S/o Sankar Loniya,
aged about 68 years.
: 10. Smt. Khel bai, wife of Shobharam
Loniya, aged about 65 years.

All R/o village: Nirath Karhipara, P.O.
Ghutku, Thesil: Takhatpur, Distt:
Bilaspur (C.G.)

: 11. Commissioner for Workmen
Compensation, Labour Court Bilaspur.

Shri Aneesh Pandey, Advocate appears for the appellant.
None for the respondents.

ORAL ORDER

(Passed on 24th January, 2006)

The following oral order of the Court was passed by
S.R.NAYAK, C.J.

In this Miscellaneous Appeal filed by the South East Central Railway, the award passed by the Commissioner for Workmen Compensation dated 30th September 2004 and the order made by the Commissioner for Workmen Compensation dated 16th December 2003 dismissing the application of the appellant filed under Order 9 Rule 13 of CPC are assailed.

2. The facts are simple:

On the demise of late Ram Ratan Loniya, Respondents No.1 to 10 who are the legal representatives of the deceased Ram Ratan Loniya, filed an application before the Workmen Compensation for compensation on the ground that Ram Ratan Loniya died in the course of employment. On that application, the Commissioner for Workmen Compensation, having served notice on the administration of South East Central Railway, passed the impugned award granting compensation in favour of the respondents No.1 to 10. When that award sought to be enforced against the appellant, the appellant made an application under order 9 Rule 13 of C.P.C. for setting aside the award dated 30th September 2004 on the ground that the award was passed by the Commissioner for Workmen Compensation without notice to it. The Commissioner for Workmen Compensation having perused the record found that as a matter of fact, the notice was served on the appellant. In that view of the matter, the Commissioner for Workmen Compensation by order dated 16th December 2003 dismissed the application filed under order 9 Rule 13 C.P.C.

3. The appellant being aggrieved by the award dated 30.09.2004 and the order dated 16.12.2003 passed by the Workmen Compensation has preferred this writ petition.

4. We have heard the learned counsel for the appellant. Even before us, the only contention urged by the learned counsel for the appellant is that the notice was not duly served on the appellant by the Commissioner for Workmen Compensation before the impugned award was passed. The learned counsel for the appellant did not seriously dispute the fact that the finding recorded by the Commissioner for Workmen Compensation in para 5 of the order dated 30.09.2004 made under order 9 Rule 13 C.P.C. is factually incorrect. If the appellant was served with the notice and the appellant did not make use of that opportunity to contest the claim, it should blame itself. In that view of the matter, there no ground is made out for us to correct the impugned award and order. There is no failure of justice.

5. The appeal is therefore dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani